

Application No.: 10/803,684
Amendment Dated August 6, 2008
Reply to Official Action of June 20, 2008

REMARKS/ARGUMENTS

This Reply is being filed in response to the second, non-final Official Action of June 20, 2008. The Official Action rejects all of the pending claims, namely Claims 1-101, under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,257,386 to McDonnell et al., in view of U.S. Patent Application Publication No. 2002/0194205 to Brown et al., and U.S. Patent Application Publication No. 2002/0026645 to Son et al., alone or further in view of one of U.S. Patent Application Publication No. 2003/0120802 to Kohno, U.S. Patent Application Publication No. 2004/0198426 to Squibbs et al., PCT Patent Application Publication No. WO 2003/026216 to Kobayashi, or U.S. Patent Application Publication No. 2003/0084128 to Anderson. As explained below, however, Applicants respectfully submit that the claimed invention is patentably distinct from McDonnell, Brown, Son, Kohno, Squibbs, Kobayashi and Anderson, taken individually or in any proper combination. Nonetheless, Applicants have amended various ones of the claims to further clarify the claimed invention. In view of the amendments to the claims and the remarks presented herein, Applicants request reconsideration and allowance of all of the pending claims of the present application.

A. Claims 1-8, 12, 13, 23-30, 34, 35, 45-48, 51, 52, 58-65, 69, 70, 80-87, 91 and 92 are Patentable

The Official Action rejects Claims 1-8, 12, 13, 23-30, 34, 35, 45-48, 51, 52, 58-65, 69, 70, 80-87, 91 and 92 as being unpatentable over McDonnell, in view of Brown and Son. According to one aspect of the claimed invention, as reflected by amended independent Claim 1, a system is provided that includes a sender and a recipient. As recited, the sender is configured to send an upload request including a request to upload content from the sender to the recipient. The recipient is configured to receive the upload request, and in response thereto, determine an upload schedule relating to at least one of the time or manner of uploading the content. The sender, in turn, is configured to upload the content to the recipient in accordance with the upload schedule.

Application No.: 10/803,684
Amendment Dated August 6, 2008
Reply to Official Action of June 20, 2008

1. Requesting Upload / Receiving Upload Schedule

In contrast to independent Claim 1, none of McDonnell, Brown or Son, taken individually or in any proper combination, teach or suggest a sender requesting to upload content to a recipient, and receiving from that recipient, a schedule for that upload. The Official Action continues to allege that McDonnell discloses a sender requesting to upload content to a network entity, but concede that McDonnell does not teach or suggest receiving, from the network entity, a schedule for that upload. For this feature, the Official Action continues to cite Brown, and alleges that one skilled in the art would have been motivated to modify McDonnell per Brown “in order to efficiently upload content due to bandwidth, time, file size, and various criteria.” Official Action of Jun. 20, 2008, page 3. Applicants continue to disagree.

Again, Brown discloses a system and method for synchronizing files across a number of distributed clients in which those clients synchronize with each other by synchronizing to a common server in a manner whereby the clients may upload or download content to or from the common server. As disclosed (and, incidentally, cited in the Official Action), “the client SA [Synchronization Application] initiates synchronization” Brown, paragraph [0028]. Thus, instead of the entity conducting the upload (client) requesting and receiving an upload schedule from the recipient of the upload (server), similar to amended independent Claim 1, Brown clearly discloses that the entity conducting the upload itself determines the upload schedule. In fact, Brown discloses that its architecture is designed to minimize load on the server, and as a consequence, the architecture offloads “as many processor-intensive operations as possible,” including the synchronization itself, to the client. *Id.* at paragraph [0026].

2. Determining an Upload Schedule

In further contrast to amended independent Claim 1, none of McDonnell, Brown or Son, taken individually or in any proper combination, teach or suggest the recipient of an upload of content determining an upload schedule relating to the time and/or manner of uploading that content. The Official Action concedes that neither McDonnell nor Brown, taken individually or in combination, teaches or suggests this feature. Nonetheless, the Official Action alleges that Son teaches the feature, and that it would have been obvious to one skilled in the art to modify

Application No.: 10/803,684
Amendment Dated August 6, 2008
Reply to Official Action of June 20, 2008

the combination of McDonnell and Brown to include the feature of Son, "in order to save costs by determining the non-peak hours when bandwidth is cheaper." Official Action of Jun. 20, 2008, page 3. Applicants respectfully disagree.

Briefly, Son discloses a system and method for content distribution via non-homogeneous access networks. As disclosed, the system may include a number of head-ends configured to store content for streaming to subscriber equipment, where relative to a particular plurality of subscriber equipment, one of the head-ends is considered local and the others are considered remote. As also disclosed, content may be streamed from a local head-end to subscriber equipment, where the content may be stored at the local head-end or first streamed to the local head-end from a remote head-end. In this regard, as cited in the Official Action, a local head-end may stream content at off-peak times when bandwidth costs are lower. Even if one could argue that the streaming of content at off-peak times constitutes an upload schedule (the accuracy of which is expressly not admitted), nowhere does Son teach or suggest that the recipient of any uploaded content, whether some subscriber equipment, remote head-end or any other recipient, determines the upload schedule, similar to amended independent Claim 1.

Applicants therefore respectfully submit that none of McDonnell, Brown or Son, taken individually or in any proper combination, teach or suggest a sender requesting to upload content to a network entity, and receiving from that network entity, a schedule for that upload, as recited by amended independent Claim 1. As such, Applicants respectfully submit that amended independent Claim 1, and by dependency Claims 2-22, is patentably distinct from McDonnell, Brown and Son, taken individually or in any proper combination. Applicants also respectfully submit that amended independent Claims 23, 45, 58 and 80, recite subject matter similar to that of amended independent Claim 1, including a sender requesting to upload content to a network entity, and receiving from that network entity, a schedule for that upload. As such, Applicants respectfully submit that amended independent Claims 23, 45, 58 and 80, and by dependency Claims 24-44, 46-57, 59-79 and 81-101, are also patentably distinct from McDonnell, Brown and Son, taken individually or in any proper combination, for at least the reasons given above with respect to amended independent Claim 1.

For at least the foregoing reasons, Applicants respectfully submit that the rejection of

Application No.: 10/803,684
Amendment Dated August 6, 2008
Reply to Official Action of June 20, 2008

Claims 1-8, 12, 13, 23-30, 34, 35, 45-48, 51, 52, 58-65, 69, 70, 80-87, 91 and 92 as being unpatentable over McDonnell, in view of Brown and Son is overcome.

B. Claims 9, 11, 15-20, 31, 33, 37-42, 50, 53-57, 66, 68, 72-77, 88, 90 and 94-99 are Patentable

The Official Action rejects Claims 9, 11, 15-20, 31, 33, 37-42, 50, 53-57, 66, 68, 72-77, 88, 90 and 94-99 as being unpatentable over McDonnell, in view of Brown and Son, and further in view of Kohno. As explained above, amended independent Claims 1, 23, 45, 58 and 80, and by dependency Claims 2-22, 24-44, 46-57, 59-79 and 81-101, are patentably distinct from McDonnell, Brown and Son, taken individually or in any proper combination. Applicants respectfully submit that Kohno does not cure the deficiencies of McDonnell, Brown and Son. That is, even considering Kohno, none of McDonnell, Brown, Son or Kohno, taken individually or in any proper combination, teach or suggest the aforementioned sender requesting to upload content to a network entity, and receiving from that network entity, a schedule for that upload, as per amended independent Claims 1, 23, 45, 58 and 80. Applicants therefore respectfully submit that amended independent Claims 1, 23, 45, 58 and 80, and by dependency Claims 2-22, 24-44, 46-57, 59-79 and 81-101, are patentably distinct from McDonnell, Brown, Son and Kohno, taken individually or in any proper combination.

For at least the foregoing reasons, Applicants submit that the rejection of Claims 9, 11, 15-20, 31, 33, 37-42, 50, 53-57, 66, 68, 72-77, 88, 90 and 94-99 as being unpatentable over McDonnell, in view of Brown and Son, and further in view of Kohno is overcome.

C. Claims 10, 32, 49, 67 and 89 are Patentable

The Official Action rejects Claims 10, 32, 49, 67 and 89 as being unpatentable over McDonnell, in view of Brown and Son, and further in view of Squibbs. As explained above, amended independent Claims 1, 23, 45, 58 and 80, and by dependency Claims 2-22, 24-44, 46-57, 59-79 and 81-101, are patentably distinct from McDonnell, Brown and Son, taken individually or in any proper combination. Applicants respectfully submit that Squibbs does not cure the deficiencies of McDonnell, Brown and Son. That is, even considering Squibbs, none of

Application No.: 10/803,684
Amendment Dated August 6, 2008
Reply to Official Action of June 20, 2008

McDonnell, Brown, Son or Squibbs, taken individually or in any proper combination, teach or suggest the aforementioned sender requesting to upload content to a network entity, and receiving from that network entity, a schedule for that upload, as per amended independent Claims 1, 23, 45, 58 and 80. Applicants therefore respectfully submit that amended independent Claims 1, 23, 45, 58 and 80, and by dependency Claims 2-22, 24-44, 46-57, 59-79 and 81-101, are patentably distinct from McDonnell, Brown, Son and Squibbs, taken individually or in any proper combination.

For at least the foregoing reasons, Applicants submit that the rejection of Claims 10, 32, 49, 67 and 89 as being unpatentable over McDonnell, in view of Brown and Son, and further in view of Squibbs is overcome.

D. *Claims 14, 36, 71 and 93 are Patentable*

The Official Action rejects Claims 14, 36, 71 and 93 as being unpatentable over McDonnell, in view of Brown and Son, and further in view of Kobayashi. As explained above, amended independent Claims 1, 23, 45, 58 and 80, and by dependency Claims 2-22, 24-44, 46-57, 59-79 and 81-101, are patentably distinct from McDonnell, Brown and Son, taken individually or in any proper combination. Applicants respectfully submit that Kobayashi does not cure the deficiencies of McDonnell, Brown and Son. That is, even considering Kobayashi, none of McDonnell, Brown, Son or Kobayashi, taken individually or in any proper combination, teach or suggest the aforementioned sender requesting to upload content to a network entity, and receiving from that network entity, a schedule for that upload, as per amended independent Claims 1, 23, 45, 58 and 80. Applicants therefore respectfully submit that amended independent Claims 1, 23, 45, 58 and 80, and by dependency Claims 2-22, 24-44, 46-57, 59-79 and 81-101, are patentably distinct from McDonnell, Brown, Son and Kobayashi, taken individually or in any proper combination.

For at least the foregoing reasons, Applicants submit that the rejection of Claims 14, 36, 71 and 93 as being unpatentable over McDonnell, in view of Brown and Son, and further in view of Kobayashi is overcome.

Application No.: 10/803,684
Amendment Dated August 6, 2008
Reply to Official Action of June 20, 2008

E. Claims 21, 22, 43, 44, 78, 79, 100 and 101 are Patentable

The Official Action rejects Claims 21, 22, 43, 44, 78, 79, 100 and 101 as being unpatentable over McDonnell, in view of Brown and Son, and further in view of Anderson. As explained above, amended independent Claims 1, 23, 45, 58 and 80, and by dependency Claims 2-22, 24-44, 46-57, 59-79 and 81-101, are patentably distinct from McDonnell, Brown and Son, taken individually or in any proper combination. Applicants respectfully submit that Anderson does not cure the deficiencies of McDonnell, Brown and Son. That is, even considering Anderson, none of McDonnell, Brown, Son or Anderson, taken individually or in any proper combination, teach or suggest the aforementioned sender requesting to upload content to a network entity, and receiving from that network entity, a schedule for that upload, as per amended independent Claims 1, 23, 45, 58 and 80. Applicants therefore respectfully submit that amended independent Claims 1, 23, 45, 58 and 80, and by dependency Claims 2-22, 24-44, 46-57, 59-79 and 81-101, are patentably distinct from McDonnell, Brown, Son and Anderson, taken individually or in any proper combination.

For at least the foregoing reasons, Applicants submit that the rejection of Claims 21, 22, 43, 44, 78, 79, 100 and 101 as being unpatentable over McDonnell, in view of Brown and Son, and further in view of Anderson is overcome.

Application No.: 10/803,684
Amendment Dated August 6, 2008
Reply to Official Action of June 20, 2008

CONCLUSION

In view of the amendments to the claims and the remarks presented herein, Applicants respectfully submit that the present application is in condition for allowance. As such, the issuance of a Notice of Allowance is therefore respectfully requested. In order to expedite the examination of the present application, the Examiner is encouraged to contact Applicants' undersigned attorney in order to resolve any remaining issues.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



Andrew T. Spence
Registration No. 45,699

Customer No. 00826
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Charlotte Office (704) 444-1000
Fax Charlotte Office (704) 444-1111
LEGAL02/30870073v1

ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON AUGUST 6, 2008.